

## **PROFESSIONAL SERVICES CONTRACT**

**THIS CONTRACT** is between the State of Indiana acting by and through the Office of the Indiana Attorney General (hereinafter "State") and Petry, Fitzgerald & Less, whose address is 107 N. Main St.; P.O. Box 98, Hebron, IN 46341-0098 (hereinafter "Counsel").

### **WITNESSETH**

**WHEREAS**, the State desires to contract for the services of an attorney at law, currently licensed to practice in the State of Indiana as well as within federal courts of the State of Indiana, to represent the State in certain legal matters; and

**WHEREAS**, Counsel has, among other things, particularized expertise and knowledge in the representation of the interest of the Indiana Family and Social Services Administration in these legal matters;

**NOW THEREFORE**, in consideration of the premises and the mutual promises herein contained, it is agreed by and among the State and Counsel as follows:

#### **1. Definitions**

- A. State is that agency of the Indiana state government which has the duty to administer and supervise the public welfare activities of the State of Indiana pursuant to IC 12-13-5-1, et. seq.
- B. Counsel is that individual or legal firm, duly licensed to practice law in the state and federal courts of Indiana, who is contracting to provide legal services for the State.
- C. State Director is the chief administrative officer of the State and the person to whom Counsel shall be primarily answerable in the performance of duties under this contract.

#### **2. Duties of Counsel**

- A. Counsel shall provide Estate recovery for Medicaid recipients pursuant to 42 U.S.C. § 1396a; IC 12-15-1-1 et seq.; IC 12-15-9 et seq.; Indiana Program Policy Manual (ICES Manual) § 4650.00.00 et seq.; and Indiana Administrative Code § 2-8 et seq. on behalf of the State. Counsel shall only work on cases as directed by the State. Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.
- B. Counsel, on behalf of the State, shall provide legal representation for the purpose of recovering funds spent on behalf of Medicaid recipients through the States Medicaid entitlement programs. This representation shall include, but is not limited to: file and open estates as a creditor; filing claims in any existing estate; and/or providing small-estate affidavits to any other company, subdivision of the State, individual, or agency of the United States or its fifty States and territories where assets of said recipients are located.

### **3. Duties of the State Director**

The State Director or any agent or agency appointed by him, and shall review and process all claim vouchers submitted by Counsel and forward approved claims to the State for Payment.

### **4. Consideration**

- A. Counsel shall receive compensation based on a contingent legal fee of 20% of all sums collected, pursuant to State-authorized cases, on behalf of the State of Indiana which may have been due and owing the State. In all cases, Counsel shall not be paid more than the maximum provided by law in any given program. Total remuneration will depend on the number of cases referred and the amount of recovery.
- B. It is specifically contemplated that Counsel will have to perform duties as a legal representative of an Estate in order to collect past Medicaid expenditures. In that event, he/she shall accept as his/her sole consideration for the amount of the Medicaid claim, the contingent fee as noted above and shall not accept as duplicate consideration those fees which may be approved under specific county Local Rules or the local Probate Court or Code. Once Medicaid expenditures in the Estate are collected and provided to the State, Counsel may, at his/her choosing, relinquish his/her duties as administrator without penalty under this agreement so long as same is approved by the appropriate court having jurisdiction in the matter.
- C. All monies collected by Counsel on behalf of the State shall be turned over to the State immediately upon receipt, less any commission owed to Counsel. On a monthly basis, Counsel shall provide a detailed accounting of the collections, by Medicaid recipient, showing all costs of collection.
- D. If alternate legal counsel is necessary due to a conflict of interest which is not waived under the Rules of Professional Conduct governing the ethical obligations of attorneys, the State shall have the right assign another attorney at the same or reduced fee, either contingent or hourly, to complete the representation of that matter.

### **5. Term**

This contract shall commence on the date it is fully executed by the State and shall be effective for a period of one year.

### **6. Access to records**

- A) The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this agreement, and shall maintain at its offices all books, accounting records, and other

evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

- B) Counsel shall have access to all information held by the State or its various agencies which, in the opinion of Counsel, will aid in either identifying deceased Medicaid Recipients, determining Medicaid expenditures on behalf of the State, or assist in Medicaid recovery efforts from deceased recipients. Counsel will exercise the same or higher level of care as that required of a State employee under IC 4-1-10 and 4-1-11 regarding release of social security numbers. Where feasible, Counsel shall have direct access via computer to information concerning Medicaid recipients.

## **7. Assignment**

Counsel shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Counsel may assign its right to receive payments so such third parties as Counsel may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

## **8. Audits**

Counsel acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with I.C. 5-11-1, and audit guidelines specified by the State.

## **9. Authority to Bind Contractor**

Notwithstanding anything in this Contract to the contrary, the signatory for Counsel represents that he/she has been duly authorized to execute contracts on behalf of Counsel and has obtained all necessary or applicable approvals from the home office of Counsel to make this Contract fully binding upon Counsel when his/her signature is affixed, and this Contract is not subject to further acceptance by Counsel when accepted by the State of Indiana.

## **10. Changes in Work**

In the event the State requires major change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to Counsel shall be determined by the State in exercise of its good faith and prudent judgment. Counsel shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

## **11. Compliance with Laws**

- A. Counsel shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, the provisions of which are incorporated by reference. The enactment or amendment of any applicable state or federal statute or the promulgation of any rules or regulations thereunder after execution of this Contract shall be reviewed by the State and Counsel to determine whether the provisions of this Contract require formal modification.
- B. As required by IC 5-22-3-7:
  - (1) Counsel and any principals of Counsel certify that
    - (A) Counsel, except for de minimis and nonsystematic violations, has not violated the terms of
      - (i) IC 24-4.7 [Telephone Solicitation of Consumers],
      - (ii) IC 24-5-12 [Telephone Solicitations] , or
      - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) Counsel will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
  - (2) Counsel and any principals of Counsel certify that an affiliate or principal of Counsel and any agent acting on behalf of Counsel or on behalf of an affiliate or principal of Counsel:
    - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

## **12. Condition of Payment**

All deliverables provided by Counsel under this contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State Representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. Counsel will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

## **13. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition**

Counsel agrees that all information, data, findings, recommendations, proposals, etc., by whatever name described and in whatever form secured, developed, written or produced by Counsel in furtherance of this Contract shall be the property of the State. Counsel

shall take such action as is necessary under law to preserve such confidentiality and property rights in and of the State while such property is within the control and/or custody of Counsel. Counsel hereby specifically waives and/or releases to the State any cognizable property right of Counsel to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

#### **14. Confidentiality of State Information**

Counsel understands and agrees that data, materials, and information disclosed to Counsel may contain confidential and protected data. Therefore, Counsel promises and assures that data, material, and information gathered, based upon or disclosed to Counsel for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent to the State. Counsel will exercise the same or higher level of care as that required of a State employee under IC 4-1-10 and 4-1-11 regarding release of social security numbers. Should Counsel improperly release a social security number, Counsel shall immediately notify the State.

#### **15. Conflict of Interest**

- A. As used in this section:  
"Immediate family" means the spouse and the unemancipated children of an individual.  
"Interested party," means:
1. The individual executing this contract;
  2. An individual who has an interest of three percent (3%) or more of Counsel, if Counsel is not an individual; or
  3. Any member of the immediate family of an individual specified under subdivision 1 or 2.
- "Department" means the Indiana Department of Administration.  
"Commission" means the State Ethics Commission.
- B. The Department may cancel this Contract without recourse by Counsel if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if Counsel gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
- D. Counsel has an affirmative obligation under this Contract to disclose to the Department when an interest party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Counsel knows or reasonably could know.

## **16. Professional Responsibility**

- A. Pursuant to the Indiana Rules of Professional Conduct, Counsel agrees to adopt reasonable procedures to determine in both litigation and nonlitigation matters the parties and issues involved and whether an actual or potential conflict of interest exists with respect to Counsel's representation of County or State. Counsel shall notify the State in writing as to the existence of a potential conflict and, when appropriate, request consent from the State as to his continued representation notwithstanding the conflict.
- B. Counsel or any member of Counsel's law firm shall not appear in any cause on behalf of a party whose position or interest is, or may be, adverse to the Family and Social Services Administration or any Division or Office thereof, or any County Office of the Division of Family and Children. "Appear", as used in this provision, shall mean participation of any kind whatsoever by Counsel or a member of Counsel's law firm. At the request of the County Director, Counsel may represent the County in a proceeding against another division or office of the Indiana Family and Social Services Administration (FSSA) when the issue of the proceeding is services for or placement of children who are under the jurisdiction of the County Office.

## **17. Debarment and Suspension**

- A. Counsel certifies, by entering into this contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this contract by any federal agency or department, agency or political subdivisions of the State of Indiana. The term "principal" for purposes of this contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Counsel.
- B. Counsel shall, during the term of this Contract, maintain his/her license to practice law in the State of Indiana and in the federal courts in the State of Indiana. Counsel shall immediately report to the State Director any pending or impending proceedings or process which may affect his/her good standing with the state bar or any state or federal court. Counsel shall abide by the most current Indiana Rules of Professional Conduct during the term of this contract. Failure to fulfill any part of this paragraph may result in termination of this Contract.

## **18. Default by State**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then Counsel may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

## **19. Disputes**

- A. Should any disputes arise with respect to this Contract, Counsel and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs, incurred by the State or Counsel as a result of such failure to proceed shall be borne by Counsel, and Counsel shall make no claim against the State for such costs. If the State and Counsel cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence or a dispute, then the following procedure shall apply:

The parties agree to resolve such matter through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Counsel and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to Counsel of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Counsel to terminate this Contract, and Counsel may bring suit to collect these amounts without following the disputes procedure contained herein.

## **20. Drug-Free Workplace Certification**

Counsel hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Counsel will give written notice to the State within ten (10) days after receiving actual notice that Counsel or an employee of Counsel has been convicted if a criminal drug violation occurring in Counsel's workplace.

False certification or violation may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Counsel hereby further agrees that this agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award if a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Counsel and made part of the contract or agreement as part of the contract documents.

Counsel certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drugs abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures of any employee who is convicted of drug abuse violations occurring in the workplace:
  - (1) taking appropriate personnel action against the employee, up to and including



termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## **21. Ethics.**

Counsel shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Counsel is not familiar with these ethical requirements, it should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<[<http://www.in.gov/ethics/](http://www.in.gov/ethics/)>>>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this contract immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Indiana Code § 4-2-6-12."

## **22. Force Majeure**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately given notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

## **23. Funding Cancellation**

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **24. Governing Laws**

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

## **25. Indemnification**

Counsel agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel and/or its subcontractors, if any. The State shall not provide such indemnification to Counsel.

## **26. Independent Contractor**

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates on one another. The employees or agents on one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

Counsel shall be responsible for providing Counsel's own office space, support staff, and supplies along with observing other conditions of an independent contractor relationship as specified under IRS guidelines.

Counsel shall be responsible for providing all necessary unemployment and workers' compensation insurance for Counsel's employees.

## **27. Licensing Standards**

The parties agree that Counsel and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by Counsel pursuant to this Contract. The State shall not be required to reimburse Counsel for any services performed when Counsel or its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, Counsel shall notify State immediately and the State, may immediately terminate this Contract.

## **28. Merger & Modification**

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

## **29. Minority and Women Business Enterprise Compliance**

The Counsel agrees to comply fully with the provisions of Counsel's MBE/WBE participation plans, and agrees to comply with all Minority and Women Business Enterprise statutory and administrative code requirements and obligations, including I.C. 4-13-16.5 and 25 IAC 5. The Counsel further agrees to cooperate fully with the minority and women's business enterprises division to facilitate the promotion, monitoring, and enforcement of the policies and goals MBE/WBE program including any and all assessments, compliance reviews and audits that may be required.

### **30. Nondiscrimination**

Pursuant to I.C. 22-9-1-10 and Civil Rights Act of 1964, Counsel and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. Counsel shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. Counsel's execution of this Contract also signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

Counsel understands that the State is a recipient of federal funds. Pursuant to that understanding, Counsel and its subcontractors, if any, agree that if Counsel employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, Counsel will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. Counsel shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

### **31. Notice to Parties**

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following address, unless otherwise specifically advised.

Notices to the State shall be sent to:

Office of the Indiana Attorney General  
Indiana Government Center South  
302 West Washington Street  
Indianapolis, IN 46204

Notice and Payments to Counsel shall be sent to the address designated by Form W-9 on file with the Auditor of State which is:

Petry, Fitzgerald & Less  
107 N. Main Street  
P.O. Box 98  
Hebron, IN 46341-0098

### **32. Authorization by the Attorney General**

Pursuant to I.C. 4-6-5-3, "No agency, except as provided in this chapter, shall have any right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service in behalf of such agency and the state without the written consent of the Attorney General." Such written consent is given by the signing of this contract by the Attorney General.

The compensation of Counsel shall be paid by Indiana Family and Social Services Administration. The Office of the Attorney General shall not advance, nor be liable for, any payment whatsoever to Counsel. Counsel specifically waives any claims against the Office of the Attorney General for payment and will look solely to Indiana Family and Social Services Administration for payment.

### **33. Ownership of Documents and Materials**

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licenses by Counsel prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and Counsel transfers any ownership claim to the State of Indiana and all such materials will be the property of the State of Indiana. Use of these materials, other than related to contract performance by Counsel, without the written consent of the State, is prohibited. During the performance of this Contract, Counsel shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the serviced provided herein while the materials are in the possession of Counsel. Any loss or damage thereto shall be restored at Counsel's expense. Full, immediate, and unrestricted access to the work product of Counsel during the term of this Contract shall be available to the State.

### **34. Payments**

- A. All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Auditor of State.
- B. Counsel shall maintain detailed records of his/her time which is spent on County legal work and shall submit same to the County and/or State upon request.

- C. Counsel shall submit claim vouchers for reimbursement of legal services provided under this Contract no later than sixty (60) days following the end of the calendar month in which the services are provided.
- E. In the event that a monetary claim against any person or entity is compromised through settlement discussions, the parties agree that such proposed settlement must be approved in writing by the offices of the Attorney General and Governor of the State of Indiana.

### **35. Penalties/Interest/Attorney's Fees**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, I.C. 5-17-5, I.C. 34-54-8, and I.C. 34-13-1.

Notwithstanding the provisions contained in I.C. 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

### **36. Progress Reports**

Counsel shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress report shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

### **37. Renewal Option**

If prior written consent has been obtained by the Attorney General, this Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with I.C. 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

### **38. Security and Privacy of Health Information**

If any final regulation or body of regulations relating to the administration simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("Final HIPAA Regulations"), or any amendment or judicial or administrative interpretation of the Final HIPAA Regulations, prohibits, restricts, limits or materially affects either party's rights or obligations hereunder, the parties shall negotiate, in good faith, reasonable revisions to this Contract for Services. The purpose of the negotiations shall

be to revise the Contract for Services so that the affected party can comply and/or act in accordance with such Final HIPAA Regulations, or amendment or judicial or administrative interpretation thereof and avoid or mitigate such prohibition, restriction, limitation or material and adverse effect. If the parties fail to agree to such revisions within forty-five (45) days after written notice from the affected party requesting negotiations under this paragraph, this Contract for Services shall terminate. If so terminated Counsel shall return all protected health information received from, created or received by Counsel on behalf of the State. Counsel shall retain no copies of such information in any form.

### **39. Severability**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

### **40. Substantial Performance**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

### **41. Successors and Assignees**

The Counsel binds its successors, executors, administrators, and assignees to all covenants of this Contract. Except as above set forth, Counsel shall not assign, sublet or transfer interest in this Contract without the prior written consent of the State of Indiana.

### **42. Taxes**

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Contract.

### **43. Termination for Convenience**

This Contract may be terminated, in whole or in part, by the State whenever, for any good -faith reason, the State determines that such termination is in the best interest of the State. Termination of services shall be effected by delivery to Counsel of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination become effective. Counsel shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. Counsel shall be compensated for services herein provided but in no case shall total payment made to Counsel exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original

termination date.

#### **44. Termination for Default**

With the provision of thirty (30) days notice to Counsel, the State may terminate this Contract in whole or in part, if Counsel fails to:

1. Correct or cure any breach of this Contract.
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and Counsel, will be liable to the State for any excess costs for those supplies or services. However, Counsel shall continue the work not terminated.

The State shall may the contract for completed supplies delivered and services accepted. Counsel and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding lines or claims of former lien holders.

The rights and remedies of the State in the clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

#### **45. Registration with the Secretary of State of Indiana**

Counsel certifies that if it is a non-domestic entity, it is registered with the Indiana Secretary of State to do business in the State of Indiana.

#### **46. Travel**

Travel expenses are included in the fees specified above and will not be separately reimbursed under this contract by the State, unless specific prior approval is obtained from the State. Approved travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

#### **47. Waiver of Rights**

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

#### **48. Work Standards**

Counsel shall execute its responsibilities by following and applying at all times the highest professional technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.

#### **49 Non-Collusion and Acceptance**

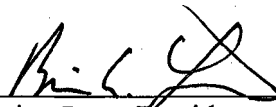
The undersigned attests, subject to the penalties of perjury, that he/she is Counsel, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has an other member, employee, representative, agent or officer of Counsel, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**



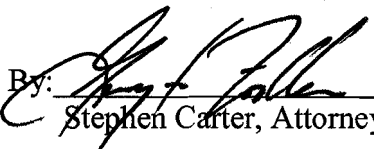
**In Witness Whereof**, Counsel and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Petry, Fitzgerald & Less

By:   
Brian Less, President

Date: 10/13/2006


Indiana Office of the Attorney General

By:  (for)  
Stephen Carter, Attorney General

Date: 10/13/06

**APPROVED:**

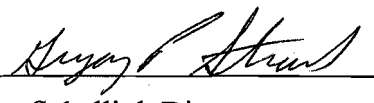
Indiana Department of Administration

By:  (for)  
Carrie Henderson, Commissioner

Date: 11/8/06

**APPROVED:**

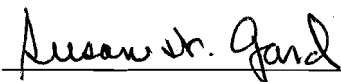
Budget Agency

By:  (for)  
Charles Schalliol, Director

Date: 11-8-06

APPROVED for Form and Legality:

Indiana Office of the Attorney General

By:  (for)  
Stephen Carter, Attorney General

Date: Nov 8, 2006